
Kilbourne et al. v. State Savings Institution of St. Louis.

court affirm the rule, that when a party, by his own contract, creates a duty or charge upon himself, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract." It was for the libellees to furnish the evidence to discharge themselves for the failure to perform their contract.

They insist that the delivery of the cargo into the custom-house under the order of the officers, and the payment of duties by the consignees, was a right delivery, and that the consignees are responsible for their safety afterward. We do not concur in this opinion. The delivery contemplated by the contract was a transfer of the property into the power and possession of the consignees. The surrender of possession by the master must be attended with no fact to impair the title or affect the peaceful enjoyment of the property. The failure to enter the property on the manifest was a cause of confiscation from the event, and rendered nugatory every effort subsequently to discharge the liability of the ship and owners.

The appellants complain that the proof does not support the decree in respect of the damage assessed. One witness testifies to the market value of the packages in Rio de Janeiro, and another approximates their cost in New York, and upon this testimony the assessment was made. It was competent to the appellants to introduce testimony in the Circuit Court, or in this court, upon that subject, but none has been submitted.

We should not be justified in concluding the decree to be erroneous under the circumstances.

Decree affirmed.

EDWARD KILBOURNE AND OTHERS v. THE STATE SAVINGS INSTITUTION OF ST. LOUIS, IN THE STATE OF MISSOURI.

Where no question was raised upon the trial of the case in the court below for the consideration of this court, nor did the plaintiff in error, by counsel or otherwise, make one here, the judgment will be affirmed with costs and interest at the rate of ten per cent. per annum.

Kilbourne et al. v. State Savings Institution of St. Louis.

THIS case was brought up by writ of error from the District Court of the United States for the district of Iowa.

It was an action brought by way of petition by the State Savings Institution in Missouri, against Edward Kilbourne, R. B. Foote, Coleman & Foote, Anson L. Deming, and Henry K. Love, citizens of the State of Iowa, upon a bill of exchange for \$1,410.37, drawn by Coleman & Foote upon Edward Kilbourne, payable to the order of R. B. Foote, one hundred and twenty days after date, and which passed, by endorsement, to the State Savings Institution of St. Louis; afterwards, there were consolidated with this suit two others, one upon a bill for \$1,526.23, and a third upon a bill for \$3,000. The judgment of the court was as follows:

It is therefore considered by the court that plaintiffs recover of said Coleman & Foote and Edward Kilbourne, as principals, and R. B. Foote, A. L. Deming, and H. K. Love, sureties, the sum of \$6,440 aforesaid, with their costs in this behalf expended, to be taxed by the clerk.

The defendants sued out a writ of error, and brought the case up to this court.

Mr. Blair and *Mr. Polk*, for the defendants in error, moved to dismiss the writ, upon the ground that it was merely sued out for delay.

Mr. Justice WAYNE delivered the opinion of the court.

No question was raised upon the trial of this case in the court below, for the consideration of this court, nor have the plaintiffs in error, by counsel or otherwise, made one here. The writ of error was obviously sued out for delay. We direct the affirmance of the judgment and ten per cent. damages

ORDER.

It is now here ordered and adjudged by this court, that the judgment of the said District Court in this cause be and the same is hereby affirmed with costs and interest at the rate of ten per cent. per annum.